



## 2009 SENATE BILL 399

1     **AN ACT** *to renumber and amend* 71.36 (1m); *to amend* 32.02 (1) and 66.0303  
2           (1); and *to create* 66.0304, 71.05 (1) (c) 10., 71.26 (1m) (k), 71.36 (1m) (b) 2. and  
3           71.45 (1t) (k) of the statutes; **relating to:** authorizing two or more cities,  
4           villages, towns, or counties, or a combination of such political subdivisions, to  
5           create a commission to issue conduit revenue bonds and exercise eminent  
6           domain authority and exempting from taxation interest on such bonds.

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*Analysis by the Legislative Reference Bureau*

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

7           **SECTION 1.** 32.02 (1) of the statutes is amended to read:  
8           32.02 (1) Any county, town, village, city, including villages and cities  
9           incorporated under general or special acts, school district, the department of health  
10          services, the department of corrections, the board of regents of the University of

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1 Wisconsin System, the building commission, a commission created by contract under  
2 s. 66.0301, with the approval of the municipality in which condemnation is proposed,  
3 a commission created by contract under s. 66.0303 that is acting under s. 66.0304,  
4 if the condemnation occurs within the boundaries of a member of the commission, or  
5 any public board or commission, for any lawful purpose, but in the case of city and  
6 village boards or commissions approval of that action is required to be granted by the  
7 governing body. A mosquito control commission, created under s. 59.70 (12), and a  
8 local professional football stadium district board, created under subch. IV of ch. 229,  
9 may not acquire property by condemnation.

10 **SECTION 2.** 66.0303 (1) of the statutes is amended to read:

11 66.0303 (1) In this section, “municipality” has the meaning given in s. 66.0301  
12 (1) (a), except that with regard to agreements described in s. 66.0304, “municipality”  
13 includes a political subdivision, as defined in s. 66.0304 (1) (f).

14 **SECTION 3.** 66.0304 of the statutes is created to read:

15 **66.0304 Conduit revenue bonds. (1) DEFINITIONS.** In this section:

16 (a) “Agreement” means a contract entered into under this section by the  
17 political subdivisions which form a commission. The contract may be amended  
18 according to the terms of the contract, and the amended contract remains an  
19 agreement.

20 (b) “Bond” means any bond, note or other obligation of a commission issued  
21 under this section, including any refunding bond or certificate of participation or  
22 lease–purchase agreement.

23 (c) “Commission” means an entity created by two or more political subdivisions,  
24 who contract with each other under s. 66.0301 (2) or 66.0303 (2), for the purpose of  
25 issuing bonds under this section.

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1 (d) “Member” means a party to an agreement.

2 (e) “Participant” means any public or private entity, including a federally  
3 recognized Indian tribe or band, that contracts with a commission for the purpose of  
4 financing or refinancing a project that is owned, sponsored, or controlled by the  
5 public or private entity.

6 (f) “Political subdivision” means any city, village, town, or county in this state  
7 or any city, village, town, county, district, authority, agency, commission, or other  
8 similar governmental entity in another state.

9 (g) “Project” means any capital improvement, purchase of receivables,  
10 property, assets, commodities, bonds or other revenue streams or related assets,  
11 working capital program, or liability or other insurance program, located within or  
12 outside of this state.

13 (ge) “Public official” means an individual who holds, or has held, a local public  
14 office, as that term is defined in s. 19.42 (7w), for a political subdivision in this state.

15 (h) “Revenue” means all moneys and fees received from any source by a  
16 commission.

17 **(2) ATTORNEY GENERAL REVIEW.** (a) Before an agreement may take effect, the  
18 proposed agreement shall be submitted to the attorney general who shall determine  
19 whether the agreement is in proper form and compatible with the laws of this state.  
20 Subject to sub. (3) (d), the attorney general shall approve any agreement submitted  
21 under this subsection unless the attorney general finds that it does not meet the  
22 conditions set forth in this section and details in writing addressed to the concerned  
23 political subdivisions’ governing bodies the specific respects in which the proposed  
24 agreement fails to meet the requirements of law. Failure to disapprove an agreement  
25 submitted under this subsection within 90 days of its submission constitutes

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1 approval. The attorney general, upon submission of an agreement, shall transmit  
2 a copy of the agreement to the governor, who may consult with any state department  
3 or agency. The governor shall forward to the attorney general any comments the  
4 governor may have concerning the agreement.

5 (b) No approval is required under this subsection for an amendment to an  
6 agreement to take effect, unless the amendment is to add a member or unless  
7 otherwise required by the terms of the agreement. A commission may not be  
8 dissolved under sub. (4m) without the approval of the attorney general, who shall  
9 certify to the commission and the participants that the dissolution resolution  
10 provides for the payment of any outstanding bonds or other obligations of the  
11 commission.

12 **(3) CREATION AND ORGANIZATION.** (a) Two or more political subdivisions may  
13 create a commission for the purpose of issuing bonds by entering into an agreement  
14 to do so under s. 66.0301 (2) or 66.0303 (2), except that upon its creation all of the  
15 initial members of a commission shall be political subdivisions that are located in  
16 this state. A commission that is created as provided in this section is a unit of  
17 government, and a body corporate and politic, that is separate and distinct from, and  
18 independent of, the state and the political subdivisions which are parties to the  
19 agreement.

20 (b) A commission shall be governed by a board, the members of which shall be  
21 appointed under the terms of the agreement. A majority of the board members shall  
22 be public officials or current or former employees of a political subdivision that is  
23 located in this state. Board members may be reimbursed for their actual and  
24 necessary expenses incurred in performing their duties to the extent provided in the  
25 agreement or the bylaws of the commission.

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1 (c) An additional political subdivision may become a member of a commission,  
2 and a member may withdraw from a commission, as provided in the agreement. For  
3 an agreement to be valid, at least one commission member shall be a political  
4 subdivision that is located in this state and a commission shall consist of at least 2  
5 political subdivisions. A commission may not take any action under this paragraph  
6 that would invalidate an agreement.

7 (d) No commission may be created under this section unless its agreement is  
8 submitted to the attorney general, under sub. (2), before the first day of the 5th  
9 month beginning after the effective date of this paragraph .... [LRB inserts date].  
10 Only one commission may be formed under this section. If more than one agreement  
11 is submitted to the attorney general before the first day of the 5th month beginning  
12 after the effective date of this paragraph .... [LRB inserts date], the attorney general  
13 must give preference to the agreement that submits with its documents a  
14 demonstration of support for its agreement from at least one statewide organization  
15 located in this state which represents the interests of political subdivisions and has  
16 political subdivisions among its membership.

17 **(4) POWERS OF A COMMISSION.** A commission has all of the powers necessary or  
18 convenient to carry out the purposes and provisions of this section. In addition to all  
19 other powers granted by this section, a commission may do any of the following:

20 (a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

21 (b) Sue and be sued in its own name, plead and be impleaded.

22 (c) Acquire, buy, sell, lease as lessor or lessee, encumber, mortgage,  
23 hypothecate, pledge, assign, or transfer any property or interest in property that is  
24 located within or outside of this state.

25 (d) Enter into contracts related to the issuance of bonds.

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(e) Issue bonds or refunding bonds, subject to sub. (5), to finance or refinance a project, including funding a reserve fund or capitalized interest, payment of costs of issuance and other costs related to the financing or refinancing, or credit enhancement, and enter into agreements related to the issuance of bonds, including liquidity and credit facilities, remarketing agreements, insurance policies, guaranty agreements, letter of credit or reimbursement agreements, indexing agreements, interest rate swap agreements, currency exchange agreements, commodity swap agreements, and other hedge agreements and any other like agreements, in each case with such payment, interest rate, currency security, remedy, and other terms and conditions as the commission determines.

(f) Employ or appoint agents, employees, finance professionals, and special advisers as the commission finds necessary and fix their compensation.

(g) Accept gifts, loans, or other aid.

(h) Establish and collect fees, plus administrative expenses, from participants who benefit from the commission's services, or services provided by an outside entity, and distribute the fees and expenses as provided in the agreement.

(i) Make loans to, lease property from or to, or enter into any other kind of an agreement with a participant or other entity, in connection with financing a project.

(j) Mortgage, pledge, or otherwise encumber the commission's property or its interest in projects.

(k) Assign or pledge any portion of its interests in mortgages, deeds of trust, indentures of mortgage or trust, leases, purchase or sale agreements or other financing agreements, or similar instruments, notes, and security interests in property, of a participant, or contracts entered into in connection with bonds.

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1           (L) Issue, obtain, or aid in obtaining, from any person, any insurance or  
2           guarantee to, or for, the payment or repayment of interest or principal, or both, on  
3           any loan, lease, bond, or other obligation evidencing or securing such a loan, lease,  
4           bond, or obligation that is entered into under this section.

5           (m) Apply on its own behalf or on behalf of a participant to any unit of  
6           government for an allocation of volume cap, tax credit, subsidy, grant, loan, credit  
7           enhancement, or any other federal, state, or local program in connection with the  
8           financing or refinancing of a project.

9           (n) Invest any bond proceeds or any money held for payment or security of the  
10          bonds, or any contract entered into under this section, in any securities or obligations  
11          permitted by the resolution, trust agreement, indenture, or other agreement  
12          providing for issuance of the bonds or the contract.

13          (o) At the request of a participant, combine and pledge revenues of multiple  
14          projects for repayment of one or more series of bonds issued under this section.

15          (p) Purchase bonds issued by or on behalf of, or held by, any participant. Bonds  
16          purchased under this paragraph may be held by the commission or sold, in whole or  
17          in part, separately or together with other bonds issued by the commission.

18          **(4m)** DISSOLUTION OF A COMMISSION. Subject to sub. (2) (b) and subject to  
19          providing for the payment of its bonds, including interest on the bonds, and the  
20          performance of its other contractual obligations, a commission may be dissolved, by  
21          resolution, as provided in the agreement. If the commission is dissolved, the property  
22          of the commission shall be transferred to the political subdivisions who are parties  
23          to the agreement creating the commission as provided in the agreement.

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1           **(5) ISSUANCE OF BONDS.** (a) A commission may not issue bonds unless the  
2 issuance is first authorized by a bond resolution. A bond issued under this section  
3 shall meet all of the following requirements:

4           1. The face of the bond shall include the date of issuance and the date of  
5 maturity.

6           2. The face of the bond shall include the statements required under subs. (9)  
7 (c) and (11) (d).

8           3. The date of maturity may not exceed 50 years from the date of issuance.

9           4. The bond shall bear a rate of interest, either fixed or variable, specified by  
10 the resolution. Any variable rate of interest shall be made subject to a maximum  
11 rate.

12           5. Interest and principal shall be paid at the time and place specified in the  
13 resolution.

14           6. Bonds in a single issue may be composed of a single denomination or 2 or  
15 more denominations, as provided in the resolution.

16           7. The bond shall be payable in lawful money of the United States or, if provided  
17 in the resolution, another currency.

18           8. Bonds shall be registered as provided in the resolution.

19           9. Bonds shall be in the form, and executed in the manner, provided in the  
20 resolution.

21           (b) A bond issued under this section may include, or be subject to, any of the  
22 following:

23           1. Early mandatory or optional redemption or purchase in lieu of redemption  
24 or tender, as provided in the resolution.

25           2. A provision providing a right to tender.



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1           3. A trust agreement or indenture containing any terms, conditions, and  
2           covenants that the commission determines to be necessary or appropriate, but such  
3           terms, conditions, and covenants may not be in conflict with the resolution.

4           (c) The commission may purchase any bond issued under this section. Subject  
5           to the terms of any agreement with the bondholders, the commission may hold,  
6           pledge, resell, or cancel any bond purchased under this paragraph, except that a  
7           purchase under this paragraph may not effect an extinguishment of a bond unless  
8           the commission cancels the bond or otherwise certifies its intention that the bond be  
9           extinguished.

10          (d) The proceeds of a bond issued under this section may be used for a project  
11          in this state or any other state.

12          (e) The commission shall send notification to the department of revenue, on a  
13          form prescribed by the department, whenever a bond is issued under this section.

14          **(6) SALE OF BONDS.** (a) The sale of bonds under this section shall be conducted  
15          as provided in the bond resolution.

16          (b) A sale may be public or private. Bonds may be sold at the price or prices,  
17          and upon the conditions, determined by the commission. The commission shall give  
18          due consideration to the recommendations of the participants in the project when  
19          determining the conditions of sale.

20          (c) Bonds that are sold under this section may be serial bonds or term bonds,  
21          or both.

22          (d) If at the time of sale definitive bonds are not available, the commission may  
23          issue interim certificates exchangeable for definitive bonds.

24          (e) The commission shall disclose to any person who purchases a tax-exempt  
25          bond issued under this section that the interest received on such a bond is exempt

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1 from taxation, as provided in ss. 71.05 (1) (c) 10., 71.26 (1m) (k), 71.36 (1m), and 71.45  
2 (1t) (k).

3 **(7) BOND SECURITY.** (a) The commission may secure bonds by a trust agreement  
4 or indenture by and between the commission and one or more corporate trustees. A  
5 bond resolution, trust agreement, or indenture may contain provisions for pledging  
6 properties, revenues, and other collateral; holding and disbursing funds; protecting  
7 and enforcing the rights and remedies of bondholders; restricting individual rights  
8 of action by bondholders; and amendments, and any other provisions the commission  
9 determines to be reasonable and proper for the security of the bondholders or  
10 contracts entered into under this section in connection with the bonds.

11 (b) A pledge of property, revenues, or other collateral by a commission to secure  
12 the payment of the principal or redemption price of, or interest on, any bonds, or any  
13 reimbursement or similar agreement with any provider of credit enhancement for  
14 bonds, or any swap or other agreement entered into in connection with bonds, is  
15 binding on the parties and on any successors. The collateral shall immediately be  
16 subject to the pledge, and the pledge shall constitute a lien and security interest  
17 which shall attach immediately to the collateral and be effective, binding, and  
18 enforceable against the pledgor, its successors, purchasers of the collateral,  
19 creditors, and all others, to the extent set forth, and in accordance with, the pledge  
20 document irrespective of whether those parties have notice of the pledge and without  
21 the need for any physical delivery, recordation, filing, or further act.

22 **(8) NO PERSONAL LIABILITY.** No board member of the commission is liable  
23 personally on the bonds or subject to any personal liability or accountability by  
24 reason of the issuance of the bonds, unless the personal liability or accountability is  
25 the result of willful misconduct.

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1           **(9) BONDS NOT PUBLIC DEBT.** (a) Unless otherwise expressly provided in the bond  
2 resolution, each issue of bonds by the commission shall be the limited obligation of  
3 the commission payable solely from amounts received by the commission from  
4 revenues derived from the project to be financed or refinanced or from any contract  
5 entered into or investment made in connection with the bonds and pledged to the  
6 payment of the bonds.

7           (b) The state and the political subdivisions who are parties to the agreement  
8 creating a commission under this section are not liable on bonds or any other contract  
9 entered into under this section, or for any other debt, obligation, or liability of the  
10 commission, whether in tort, contract, or otherwise.

11           (c) The bonds are not a debt of the state or the political subdivisions contracting  
12 to create a commission under this section. A bond issue under this section does not  
13 obligate the state or a political subdivision to levy any tax or make any appropriation  
14 for payment of the bonds. All bonds issued by a commission are payable solely from  
15 the funds pledged for their payment in accordance with the bond resolution or trust  
16 agreement or indenture providing for their issuance. All bonds shall contain, on  
17 their face, a statement regarding the obligations of the state, the political  
18 subdivisions who are parties to the agreement creating the commission, and the  
19 commission as set forth in this paragraph.

20           **(10) AUDITS, FISCAL YEAR.** (a) The board of a commission shall adopt a calendar  
21 year as its fiscal year for accounting purposes. The board shall annually prepare a  
22 budget for the commission.

23           (b) A commission shall maintain an accounting system in accordance with  
24 generally accepted accounting principles and shall have its financial statements and  
25 debt covenants audited annually by an independent certified public accountant,

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1 except that the commission by a unanimous vote may decide to have an audit  
2 performed under this paragraph every 2 years.

3 (c) A copy of the budget and audit shall be sent to the governing body of each  
4 political subdivision which is a party to the agreement that created the commission  
5 and filed with the secretary of administration and the legislative audit bureau.

6 **(11) LIMITATIONS.** (a) A commission may not authorize bonds to finance a  
7 capital improvement project unless a political subdivision within whose boundaries  
8 the project is to be located has approved the financing of the project. A commission  
9 may not authorize bonds to finance a capital improvement project in this state unless  
10 all of the political subdivisions within whose boundaries the project is to be located  
11 has approved the financing of the project.

12 (b) This section provides a complete alternative method, to all other methods  
13 provided by law, to exercise the powers authorized in this section, including the  
14 issuance of bonds, the entering into of contracts related to those bonds, and the  
15 financing or refinancing of projects.

16 (c) Any action brought to challenge the validity of the proposed issuance of a  
17 bond under this section, or the enforceability of a contract entered into under this  
18 section, must be commenced in circuit court within 30 days of the commission  
19 adopting a resolution authorizing the issuance of the bond or the execution of the  
20 contract.

21 (d) Bonds issued under this section shall not be invalid for any irregularity or  
22 defect in the proceedings for their sale or issuance. The bonds shall contain a  
23 statement that they have been authorized and issued pursuant to the laws of this  
24 state. The statement shall be conclusive evidence of the validity of the bonds.

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1 (e) 1. Before issuing bonds on any project, as that term is used in s. 231.01 (7),  
2 in this state, a commission must receive written approval from the Wisconsin Health  
3 and Educational Facilities Authority.

4 2. Before issuing bonds on any economic development project, as that term is  
5 used in s. 234.01 (4n), in this state, or on any housing project, as defined in s. 234.01  
6 (7), in this state, a commission must receive written approval from the Wisconsin  
7 Housing and Economic Development Authority.

8 **(12) STATE PLEDGE.** The state pledges to and agrees with the bondholders, and  
9 persons that enter into contracts with a commission under this section, that the state  
10 will not limit, impair, or alter the rights and powers vested in a commission by this  
11 section, including the rights and powers under sub. (4), before the commission has  
12 met and discharged the bonds, and any interest due on the bonds, and has fully  
13 performed its contracts, unless adequate provision is made by law for the protection  
14 of the bondholders or those entering into contracts with a commission. The  
15 commission may include this pledge in a contract with bondholders.

16 **SECTION 4.** 71.05 (1) (c) 10. of the statutes is created to read:

17 71.05 **(1)** (c) 10. A commission created under s. 66.0304, if any of the following  
18 applies:

19 a. The bonds or notes are used to fund multifamily affordable housing projects  
20 or elderly housing projects in this state, and the Wisconsin Housing and Economic  
21 Development Authority has the authority to issue its bonds or notes for the project  
22 being funded.

23 b. The bonds or notes are used by a health facility, as defined in s. 231.01 (5),  
24 to fund the acquisition of information technology hardware or software, in this state,

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1 and the Wisconsin Health and Educational Facilities Authority has the authority to  
2 issue its bonds or notes for the project being funded.

3 c. The bonds or notes are issued to fund a redevelopment project in this state  
4 or a housing project in this state, and the authority exists for bonds or notes to be  
5 issued by an entity described under s. 66.1201, 66.1333, or 66.1335.

6 **SECTION 5.** 71.26 (1m) (k) of the statutes is created to read:

7 71.26 **(1m)** (k) Those issued under s. 66.0304, if any of the following applies:

8 1. The bonds or notes are used to fund multifamily affordable housing projects  
9 or elderly housing projects in this state, and the Wisconsin Housing and Economic  
10 Development Authority has the authority to issue its bonds or notes for the project  
11 being funded.

12 2. The bonds or notes are used by a health facility, as defined in s. 231.01 (5),  
13 to fund the acquisition of information technology hardware or software, in this state,  
14 and the Wisconsin Health and Educational Facilities Authority has the authority to  
15 issue its bonds or notes for the project being funded.

16 3. The bonds or notes are issued to fund a redevelopment project in this state  
17 or a housing project in this state, and the authority exists for bonds or notes to be  
18 issued by an entity described under s. 66.1201, 66.1333, or 66.1335.

19 **SECTION 6.** 71.36 (1m) of the statutes is renumbered 71.36 (1m) (a) and  
20 amended to read:

21 71.36 **(1m)** (a) A tax-option corporation may deduct from its net income all  
22 amounts included in the Wisconsin adjusted gross income of its shareholders, the  
23 capital gain deduction under s. 71.05 (6) (b) 9. and all amounts not taxable to  
24 nonresident shareholders under ss. 71.04 (1) and (4) to (9) and 71.362.

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1           **(b)** For purposes of this subsection, interest on any of the following obligations  
2 is not included in shareholders' income:

3           **1. Interest** on federal obligations, ~~obligations.~~

4           **3. Interest on obligations** issued under s. 66.0621 by a local professional  
5 baseball park district, a local professional football stadium district, or a local cultural  
6 arts district, ~~obligations.~~

7           **4. Interest on obligations** issued under ss. 66.1201, 66.1333, and 66.1335,  
8 ~~obligations.~~

9           **5. Interest on obligations** issued under s. 234.65 to fund an economic  
10 development loan to finance construction, renovation or development of property  
11 that would be exempt under s. 70.11 (36) ~~and obligations.~~

12           **6. Interest on obligations** issued under subch. II of ch. 229 ~~is not included in~~  
13 ~~shareholders' income.~~

14           **(c)** The proportionate share of the net loss of a tax-option corporation shall be  
15 attributed and made available to shareholders on a Wisconsin basis but subject to  
16 the limitation and carry-over rules as prescribed by section 1366 (d) of the Internal  
17 Revenue Code. Net operating losses of the corporation to the extent attributed or  
18 made available to a shareholder may not be used by the corporation for further tax  
19 benefit. For purposes of computing the Wisconsin adjusted gross income of  
20 shareholders, tax-option items shall be reported by the shareholders and those  
21 tax-option items, including capital gains and losses, shall retain the character they  
22 would have if attributed to the corporation, including their character as business  
23 income. In computing the tax liability of a shareholder, no credit against gross tax  
24 that would be available to the tax-option corporation if it were a nontax-option  
25 corporation may be claimed.

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**SECTION 6d.** 71.36 (1m) (b) 2. of the statutes is created to read:

71.36 **(1m)** (b) 2. Interest on obligations issued under s. 66.0304 by a commission if the bonds or notes are used to fund multifamily affordable housing projects or elderly housing projects in this state, and the Wisconsin Housing and Economic Development Authority has the authority to issue its bonds or notes for the project being funded, or if the bonds or notes are used by a health facility, as defined in s. 231.01 (5), to fund the acquisition of information technology hardware or software, in this state, and the Wisconsin Health and Educational Facilities Authority has the authority to issue its bonds or notes for the project being funded, or if the bonds or notes are issued to fund a redevelopment project in this state or a housing project in this state, and the authority exists for bonds or notes to be issued by an entity described under s. 66.1201, 66.1333, or 66.1335.

**SECTION 7.** 71.45 (1t) (k) of the statutes is created to read:

71.45 **(1t)** (k) Those issued under s. 66.0304, if any of the following applies:

1. The bonds or notes are used to fund multifamily affordable housing projects or elderly housing projects in this state, and the Wisconsin Housing and Economic Development Authority has the authority to issue its bonds or notes for the project being funded.

2. The bonds or notes are used by a health facility, as defined in s. 231.01 (5), to fund the acquisition of information technology hardware or software, in this state, and the Wisconsin Health and Educational Facilities Authority has the authority to issue its bonds or notes for the project being funded.

3. The bonds or notes are issued to fund a redevelopment project in this state or a housing project in this state, and the authority exists for bonds or notes to be issued by an entity described under s. 66.1201, 66.1333, or 66.1335.



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## SECTION 8. Initial applicability.

(1) The treatment of sections 71.05 (1) (c) 10., 71.26 (1m) (k), 71.36 (1m), and 71.45 (1t) (k) of the statutes first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after July 31, the treatment of sections 71.05 (1) (c) 10., 71.26 (1m) (k), 71.36 (1m), and 71.45 (1t) (k) of the statutes first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect.

**(END)**